

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BENJAMIN WALKER,

Plaintiff,

File No. 2:07-CV-210

v.

HON. ROBERT HOLMES BELL

PAUL EYKE,

Defendant.

_____ /

**ORDER AND JUDGMENT ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On February 28, 2009, United States Magistrate Judge Timothy P. Greeley issued a report and recommendation ("R&R") recommending that Defendant Paul Eyke's motion for summary judgment (Dkt. No. 26) be granted and that Plaintiff Benjamin Walker's complaint be dismissed in its entirety. (Dkt. No. 54.) The R&R was duly served on the parties. Plaintiff filed objections to the R&R on March 5, 2009. (Dkt. No. 55).

This Court is required to make a *de novo* determination of those portions of the R&R to which objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Plaintiff objects to the conclusion that he failed to sustain his burden of proof in response to Defendant's motion for summary judgment. Plaintiff contends generally that the

medical staff of the Michigan Department of Corrections second guessed the medical judgment of Plaintiff's treating physician to Plaintiff's detriment. Plaintiff has not, however, responded to the specific findings in the R&R regarding Plaintiff's failure to sustain his burden of proof in response to Defendant Eyke's motion for summary judgment. The Court agrees with the Magistrate Judge that Plaintiff's evidence is not sufficient to create an issue of fact for trial on his Eighth Amendment claim against Defendant Eyke. Accordingly,

IT IS HEREBY ORDERED that the February 18, 2009, R&R (Dkt. No. 54) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant Paul Eyke's motion for summary judgment (Dkt. No. 26) is **GRANTED**.

IT IS FURTHER ORDERED that **JUDGMENT** is entered in favor of Defendant Paul Eyke and Plaintiff's complaint is **DISMISSED** in its entirety.

Dated: April 29, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE